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PLEASE REPLY TO:

November 22, 2005

The Honorable Joseph J. Farnan, Jr.
United States District Court
844 N. King Street
Wilmington, DE 19801

Re: Sherman Carter v. Taylor, et al.;
C.A. No. 99-757-JJF

Dear Judge Farnan:

Please accept this letter as notice to the Court that the Defendants have filed a Notice of Appeal today to the Third Circuit Court of Appeals in relation to the Court's November 10, 2005 order denying the Defendants' Motion for Summary Judgment with respect to the issue of Qualified Immunity. As Your Honor may recall, the denial of Qualified Immunity at summary judgment is considered a "final appealable order" and is immediately reviewable as a matter of right. *See Mitchell v. Forsyth*, 472 U.S. 511, 526-27 (1985); *Wright v. City of Philadelphia*, 409 F.3d 595, 599 (3d Cir. 2005).

As Your Honor may recall, the filing of a notice of appeal divests the trial court of jurisdiction and confers jurisdiction upon the appellate court. *In re AWC Liquidation Corp.*, 292 B.R. 239, 242 (D.Del. 2003). A federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. *Death Row Prisoners of Pennsylvania v. Ridge*, 948 F.Supp. 1282, 1285 (E.D.Pa. 1996), citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). By operation of the filing of the instant Notice of Appeal, this matter must be stayed pending resolution of the appeal.

The parties are currently scheduled to attend a pre-trial conference before Your Honor on December 1, 2005 at 11:00 a.m. and a 4-day Jury Trial in this matter is scheduled to begin January 9, 2006. The Defendants respectfully request that this

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Honorable Court adjourn and stay these proceedings until such time as the Third Circuit Court of Appeals has disposed of their appeal. Additionally, with regard to Plaintiff's recently-filed Motion in Limine (D.I. # 156), the Defendants' appeal herein tolls the time period within which they are required to respond to said motion. For the purposes of preserving their position, the Defendants oppose Plaintiff's Motion in Limine and will address the merits of said motion should this matter return to District Court or at a time as may be otherwise directed by this Honorable Court.

Counsel for the Defendants remain available to address any matter as may be required by this Honorable Court.

Respectfully submitted,

/S/ Aaron R. Goldsein

Aaron R. Goldstein
Deputy Attorney General

CC: Sherman Carter
Stuart B. Drowos, Esquire
Clerk of District Court
Stanley Taylor, Commissioner of Correction
Robert Snyder
Rebecca McBride